IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C.BHANU

WRIT PETITION NO. 12969 of 2004

Between:

P. Sudarshan Rao S/o Lakshman,

Aged 50 years, Occ: Secretary,
PACS, Kalladi Resident of Kalladi,

Makloor Mandal, Nizamabad District

..... PETITIONER

AND

1 The Deputy Registrar of Cooperative Societies/

Divisional Cooperative Officer, Nizamabad,
Nizamabad District
2 The Primary Agricultural Cooperative Society Ltd.,

Kalladi, Makloor Mandal, Nizamabad District

rep by Chairman Persons-in-Charge Committee

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of mandamus (i) declaring the proceeding issued by the 1st respondent in Rc. No. 594/84-B, dated 12-7-2004 directing the 2nd respondent to place the petitioner under suspension by invoking the provisions of Section 59 of A.P. Cooperative Societies Act as illegal, arbitrary and unconstitutional apart from being violative of principles of natural justice and beyond the powers vested in him and consequently set a side the same.

Counsel for the Petitioner: MR.NANDIGAM KRISHANA RAO

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent No.2: MR.CH.JANARDHANA REDDY

The Court made the following:

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ORDER:

Challenging the proceedings issued by the 1st respondent in Rc.No.594/84-B, dated 12.07.2004, directing the 2nd respondent to place the writ petitioner under suspension, this writ petition is filed.

The petitioner worked as a Secretary in various Primary Agricultural Cooperative Societies. In the year 1984 the petitioner was placed under suspension. Because of the abolition of common cadre, enquiry was not held, but the suspension was continued, for which a writ petition is filed for payment of subsistence allowance, but the respondents have not implemented this Court order. But however, after filing of a contempt case, subsistence allowance was paid. Thereafter, by virtue of proceedings, dated 28.11.2002, issued by the Registrar of Cooperative Societies, he was reinstated into service. Enquiry Officer has submitted a report in the month of February, 2003. Relying on the report, under Section 51 of the A.P.Cooperative Societies Act, 1964 (for short 'the Act'), dated 23.12.1985, once again the 1st respondent directed the 2nd respondent society to place him under suspension through the impugned proceedings. Earlier in relation to the same enquiry, he was placed under suspension, and the suspension order continued for more than 18 years till it is set aside by the Joint Registrar of Cooperative Societies. Hence the present writ petition.

The respondents filed counter affidavit stating that the petitioner joined in the 2nd respondent society on 06.12.2002 and the respondents do not know the earlier suspension. Pursuant to the orders of the District Cooperative Officer, the petitioner joined in the 2nd respondent society on 06.12.2002 and there is no allegation on charges against the petitioner since 06.12.2002. Hence the writ petition may be dismissed.

The learned counsel appearing for the petitioner contended that the

petitioner did not commit any irregularities in the 2nd respondent society and therefore, the 1st respondent society cannot direct the 2nd respondent society to place him under suspension for the irregularities, alleged to have been committed in some other society, and hence the impugned proceedings suffer from serious legal infirmities and prays to declare the same as illegal.

On the other hand, the learned Government Pleader appearing for the 1st respondent contended that it is only suspension pending enquiry, that the suspension order was not under challenge and therefore, it is not the stage to revoke the suspension order. The learned counsel appearing for the

2nd respondent contended that the society, where the petitioner is alleged to have been committed irregularities, and the present society are under control of the 1st respondent and he is competent person to direct the society, under which the petitioner is working, to suspend him by virtue of Sec.59 of the Act and therefore, he prays to dismiss the writ petition.

The learned counsel for the petitioner relied upon a decision reported in ***Nookala Gavaraiah vs. Special Category Deputy Registrar & others*** wherein it was held:

> "A careful reading of sub-section (1) of Section 59 of the Act makes it very clear that the Registrar by virtue of the power granted to him under this sub-section can direct suspension of only those paid servants or officers of the Cooperative Society against which inquiry/investigation is ordered either under Section 51 or 52 or 53 of the Act. The phrases, "Paid officer or servant of a Society" and "in relation to the Society" occurring in sub-section (1) are significant and key words in constructing the provision. 'A society' or 'the Society' is ultimately referable to the Society against which an inquiry or investigation was ordered under Section 50 to 53 of the Act and such inquiry/investigation is pending, and not any other society. Here is a case where the action initiated under Section 51 of the Act is not against the 4th respondent-Bank, which is also a 'Cooperative Society' within the meaning of that term. Added to this, the petitioners never served in the establishment of the Rana Primary Agricultural Co-operative Society as paid employees or officers. Therefore, the submission of the learned Counsel for the petitioner that necessary conditions for exercising the power under Section 59 (1) of the Act did not exist before the impugned direction was issued by the 1st respondent is well-founded."

The above decision has no application to the present facts of the case, because the petitioner therein never served in the establishment of a particular society where certain irregularities were noticed. But in this case, the society under which the present petitioner is alleged to have been committed irregularities and the 2nd respondent society are admittedly within the jurisdiction of the 1st respondent.

For certain irregularities in the Primary Agricultural Cooperative Society, Chimrajpally, the petitioner was placed under suspension by its proceedings dated 24.02.1984 and the suspension was continued till the proceedings dated 28.11.2002 issued by the Joint Registrar, and thereafter, he was reinstated into service and allotted to Primary Agricultural Cooperative Society, Kalladi. A domestic enquiry was conducted by the Enquiry Officer and a report was submitted as long as in the year 1987. No action has been taken thereafter. No proceedings as available under the Cooperative Societies Act were initiated. Now the present impugned proceedings have been issued directing the management of the Committee to place the writ petitioner under suspension.

The petitioner was kept under suspension for the same alleged acts of misappropriation for a period of 18 years, and for the same alleged misconduct, the present proceedings have been issued. Instead of taking action on the report submitted by the Enquiry Officer, dated 15.10.1987, again the petitioner was suspended. It is not a case where the 1st respondent noticed some other irregularities other than those brought to the notice of the concerned authorities in respect of the earlier suspension order. For the self-same misappropriation of funds, the petitioner was placed under suspension pending enquiry and the Enquiry Officer submitted a

report. For the self-same cause again suspending the writ petitioner cannot be sustainable in law. Hence the impugned proceedings are declared as illegal and accordingly they are set aside.

The Writ Petition is, accordingly, allowed. This order will not preclude the respondents to take appropriate action in pursuance of the report submitted by the Enquiry Officer, dated 15.10.1987. No order as to costs.

Dated: 15.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Deputy Registrar of Cooperative

Societies/Divisional Cooperative Officer,

Nizamabad, Nizamabad District

2. The Chairman,

The Person-in-charge Committee,

The Primary Agricultural Cooperative Society Ltd.,

Kalladi, Makloor Mandal,

Nizamabad District

3. Two CCs to the Government Pleader

for Cooperation, High Court Buildings,

Hyderabad (OUT)

4. Two CD copies.